IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

W.A.No.874 of 2006(C)

AGAINST THE JUDGEMENT IN O.P.NO.31600/2000 DATED 20/10/2005
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APPELLANT: PETITIONER:-

M/S.K.G.P.INDUSTRIES,
MATOOR,
KALADY,
REPRESENTED BY ITS MANAGING PARTNER,
K.P.DAVIS.

BY ADV. SMT.S.K.DEVI.

RESPONDENTS: RESPONDENTS:-
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1. THE ASST. COMMISSIONER (ASSMT),
   DEPT. OF COMMERCIAL TAXES,
   SPL. CIRCLE,
   MATTANCHERY.

2. THE DIRECTOR OF INDUSTRIES & COMMERCE,
   THIRUVANANTHAPURAM.

3. THE DEPUTY TAHASILDAR (RR),
   ALUVA TALUK,
   ALUVA.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.A.No.874 of 2006-C

Dated, this the 24th day of September, 2007

JUDGMENT

H.L.Dattu,C.J.

Appellant before us is aggrieved by the orders passed by the learned Single Judge in O.P.No.31600 of 2000 dated 20th October, 2005.

(2) Appellant is a small scale industrial unit. It is engaged in the production and sale of crushed bones and bone meal. It had established its small scale industrial unit on 15.01.1990 and the commercial production was done only on 28.08.1991.

(3) The appellant-industrial unit had approached the District Level Committee for grant of exemption from payment of sales tax. The District Level Committee by its order dated 01.10.1993 (Exhibit P2) had granted exemption for the period from 28.08.1991 to 27.08.1996 only on the sale of the bone meal.

(4) An application came to be filed by the appellant to include even the crushed bone in the certificate/orders passed (Exhibit P2).

(5) The claim made by the petitioner was granted by the District Level Committee by their order dated 10.01.1995 [Exhibit P2(a)] and thereby had included crushed bones as a commodity which is eligible for exemption from payment of sales tax.

(6) The appellant has made investments for the expansion of the small scale industrial unit on 01.11.1993. After such expansion, once again the appellant industrial unit had approached the District Level Committee for grant of exemption from payment of sales tax on the sale of bones.

(7) The District Level Committee had passed an order on 28.07.1997 (Exhibit P3) granting exemption only on the sale of bone meal.

(8) Once again the appellant had filed an application before the District Level Committee to include crushed bones also as a commodity which is eligible and entitled for exemption from payment of sales tax. The claim so made by the appellant was rejected by the District Level Committee on 30.09.1997. The order reads as follows:-

> "Please refer to the S.T. Exemption granted vide proceedings No.A8-8938/96 dated 28.7.1997.
>
> I am to inform you that as per the decision of the State Level Committee held on 11.10.1996 production of crushed bone is not eligible for ST exemption and hence the request to revise the ST exemption under including crushed bone cannot be considered.
>
> Yours faithfully,
> Sd/-
> General Manager".

(9) Aggrieved by the said order, the appellant filed an appeal (Exhibit P5) on 06.11.1997.

(10) Since the assessing authority had passed an order of assessment for the assessment year 1993-94 on 30.12.1999, the appellant/petitioner had approached this Court in O.P.No.31600 of 2000.

(11) The learned Single Judge has rejected the writ petition. That is how the appellant is before us in this appeal.

(12) It is not in dispute nor it can be disputed by the appellant that being aggrieved by the orders passed by the General Manager, District Level Committee, has filed an appeal before the first appellate authority, viz., the State Level Committee, and that appeal is pending.

(13) Appellant/petitioner, instead of pursuing the appeal filed against the orders passed by the District Level Committee (Exhibit P4), could not have approached this Court. In that view of the matter, without going into the other details of the case, this Writ Appeal is disposed of as under:

Order

(i) The Writ Appeal is disposed of.

(ii) The State Level Committee would now consider and dispose of the appeal filed by the appellant dated 06.11.1997 in accordance with law without being influenced by any one of the observations made by the learned Single Judge while disposing of the Original Petition dated 20.10.2005 as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this Court's order.

(iii) Needless to say that the appellate authority, while considering the appeal, would afford an opportunity of being heard in the matter to the appellant.

(iv) All other contentions of the parties are left open.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-